

Remarks

Applicant hereby petitions for and includes a petition for a three-month extension of time to respond and includes the necessary fees to make payment therefore. Applicant also includes the appropriate fees for adding new dependent claim 88.

Claims 1-87 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Carmody (US 2002/0143596) in view of Thomason. Applicant respectfully submits that the amendments provided hereinbefore and the discussion below traverse the rejection.

An analysis of the state of the art at the time of the invention strongly indicates Applicant's invention is non-obvious:

Under M.P.E.P. 2141.01, Scope and Content of the Prior art, Section III entitled "Content of the Prior Art Is Determined at the Time the Invention Was Made to Avoid Hindsight", the Examiner is required to ascertain the state of the prior art prior to the invention. Moreover, the law is clear that non-obviousness of a solution is strongly evidenced when experts in the art have tried and failed to solve long standing problems.

In the present case, for well over a decade prior to the present invention, regulators have been highly suspicious and/or aware of deceit by services companies whereby money paid by wastewater system owners for routine scheduled inspections is simply pocketed and no routine inspections are made. In at least one state, the regulators went so far as to prevent use of certain types of wastewater systems - not because the systems do not work properly as long as routine inspections are made, but because the regulators simply do not trust the environment to the honesty

of unmonitored service companies. In many cases, this meant that people could not even build on their own land. This is clearly a big, long-standing problem.

History shows there is evidence of a strong precedent for service companies to falsify routine inspection reports because it provides a quick, easy, way to earn inspection money without paying the transportation and manpower costs of sending a service man to each location. Honest service companies find it difficult to compete in this business environment and may be driven out of business in states where a high percentage of routine inspections are not made. The cited references Carmody and Thomason do not even recognize this problem and do not provide a solution to this problem.

Many attempts by those of skill in the art were made to solve the problem (see the background section of Applicant's specification) but the attempts failed. After decades of numerous failed attempts by those of skill in the art to solve a deep- seated and vexing problem, Applicant's system is the first to provide a solution that actually works.

*This is the scope and content of the prior art as set out by the attached Declaration of Jerry L. McKinney, the present inventor. If the Examiner does not accept the above as being an accurate assessment of the state of the art at the time of the invention, then Applicant's attorney kindly requests an interview to understand why.*

Given the longstanding and serious nature of the problem and the previous attempts to solve the problem, it is clear that the solution was not obvious to those of skill in the art. Accordingly, there is no reason whatsoever to believe that it would have been obvious to one of skill in the art to look at Carmody, which teaches nothing about a solution to this problem, and combine Carmody with features from Thomason, who also teaches nothing about the problem per

se as required to establish a *prima facie* case under 35 U.S.C. 103(a). Accordingly, Applicant respectfully submits that the rejection of claims 1-87 is traversed.

There is no motivation to combine Carmody with Thomason:

As noted above, neither Carmody nor Thomason have anything whatsoever to do with the solution provided by the present invention. Accordingly, there would be no motivation at the time of the invention for one of skill in the art to combine Carmody and Thomason to provide the elements of Applicant's claimed invention as required to support a rejection under 35 U.S.C. 103(a). Neither Carmody nor Thomason teach anything about providing a solution to profiteering by service companies who ignore environmental regulations and pocket money paid by tens or hundreds of thousands of wastewater system owners for routine scheduled inspections that are not ever performed. Carmody blithely assumes that all service providers are honest. In fact, Carmody provides service companies with electronic forms which allow unscrupulous service providers to more quickly and efficiently defraud regulators and wastewater system owners. Thomason provides expert oversight for a field technician who is at a location but no oversight for the company that financially benefits if the field technician does not go to the location at all. Therefore, both Thomason and Carmody assumes the company acts honestly. Given that neither Carmody nor Thomason teach anything whatsoever about the problem solved by Applicant, and given that Carmody and Thomason do not even recognize the problem, there is no motivation to combine Carmody with Thomason. In order to support a rejection under 35 U.S.C. 103(a), a motivation to make the proposed combination must be shown. Because there is clearly no such motivation, Applicant respectfully submits the rejection is traversed.

Not all claim limitations are shown by Carmody and Thomason:

Applicant has amended claims 1 - 11, 13, 17, 21, 32, 58 - 64, 67, and 88 to provide limitations related to a third party for administering functions of the system and method wherein the use of the third party improves truthfulness, completeness, and accuracy of the information. See Applicant's published application paragraph 0051 wherein terms such as "third party" and "independent" are specifically defined. Carmody and Thomason are not concerned with verification, or accuracy of information, or completeness of information and therefore do not discuss the features specifically recited in the above-listed claims, and do not show the claimed features, as described by these limitations. Carmody and Thomason both assume that information is accurate and complete and there is no need for verification. Accordingly, claims 1-11, 13, 32, 67, 88 now specifically claim an independent non-governmental entity, such as what is now known as the NSF® or other similar entities. For the definition of an independent third party, see Applicant's published application paragraph 0051 wherein an independent third party is defined as per ISO Guide 2 as being independent of the parties involved as concerns the issues in question, e.g., verification and/or data security. Claim 17 and 21 provides for a non-governmental third party which, as explained in paragraph 0051, might include equipment manufacturers who do not contract to provide routine inspection and/or maintenance services and therefore come close to being independent as per other claim limitations. Original claims 75-87 and amended claims 58-64 include a limitation of a third party and an independent entity, respectively, which terms might also include governmental third party entities as governmental entities may typically be assumed

to be independent. The above-discussed limitations are provided to further emphasize the fact that only Applicant's system is designed to prevent the persistent dishonesty by service companies in pocketing inspection payments, as discussed hereinbefore, and therefore also relate to improper use of data collected. Accordingly, claims 1-11, 13, 17, 21, 32, 58 - 64, 67 and 75 - 88 are allowable, not only because there is no motivation whatsoever to combine Carmody and Thomason, but also because neither Carmody nor Thomason, even in combination, shows all the elements thereof.

Carmody also does not discuss the problem of non-renewal of service contracts as specifically described in claims 10, 19, 23, 36, 48, 57. Of course, Thomason has nothing to do with this.

Moreover, Applicant submits that Carmody does not provide the regulatory body with a means for automatically printing noncompliance notices for the system owners and/or service personnel as per claims 11 and 24, but simply produces red flags for the regulatory body to "investigate." (See Carmody paragraph 0145 - or step 505 of FIG. 5) Such "investigations" are time consuming and will probably then require such notices to be manually produced without saving the time required when the facts appear noncompliance has occurred, as per claims 11, 24.

Carmody does not detect personnel for initial operation of a wastewater system after installation or after a shutdown was made as per claims 37 and 38. Of course, Thomason provides nothing whatsoever about these subjects and is directed to a completely different invention unrelated to these subjects.

It is also respectfully noted that Thomason automatically stores time data only if and when the mobile field technician is on-line and transmitting to the local master technician ( Col. 6, lines 5-7). Thomason further states that in most cases, no help is needed from the local master

technician (Col. 1, lines 19-24). Accordingly, in most cases no time data will be automatically recorded using the Thomason invention. Applicant's claims 1 calls for automatically storing time data....at each of the plurality of wastewater systems. Clearly, Thomason does not perform or even suggest this step. The Examiner agrees that Carmody does not teach detecting a physical presence at a wastewater system and does not teach any need whatsoever to do so. Neither Carmody nor Thomason clearly and particularly show a step of automatically storing time data or otherwise producing data by sensors at each of the plurality of wastewater locations as required to support a rejection under 35 U.S.C. 103(a) as per claims 1-19, 27-38, and 49-74.

Analyzing Thomason in even more detail, and even assuming the Thomason system was used at each of the millions of wastewater locations (which seems incredibly unlikely), it would not be possible for the local master technician to know whether the personnel are at a particular location because the local master technician cannot tell simply by looking through a camera the location of the mobile field technician. Most wastewater plants look very similar. The local master technician's job is not to determine what location the personnel are at. Thomason does not recognize this problem and does not address this problem. Nor is this problem recognized by Carmody. As noted above, in most cases, the mobile field technician will not even transmit because he will not need assistance (See Thomason Col. 1, lines 19-24). Moreover, there is no suggestion by Thomason that the field technician will go to the significant difficulty of setting up all his equipment at each location.

As for physical presence at the location, this is at the whim of the Thomason field technician. If a service personnel does not show up at a location as required, then clearly Thomason will not be filming or transmitting any data from that location. The service personnel

may or may not have been at the location but there is no way, vis-a-vis Thomason, to verify the absence of the service technician.

The bottom line is that even the order to send the Thomason field technician to a location whereby costs are incurred by a service company is at the complete whim and option and control of the service company and/or the master technician. There is no oversight which would prompt the service company to send the service personnel to each location as required by the regulations and as paid for by the site owner. Under either Thomason and Carmody, the service company may simply collect fees for routine inspections without ever sending a service person to the location, thus saving both manpower and fuel costs. Even assuming there were a motivation to combine Carmody and Thomason, which Applicant strongly asserts there is not, in order to support a rejection under 35 U.S.C. 103(a) all the claim limitations must be taught or suggested by the prior art. The showing must be clear and particular. See, e.g., *C.R. Bard*, 157 F.3d at 1352, 48 USPQ2s at 1232. See M.P.E.P. 2143.03. Accordingly, Applicant respectfully submits claims 1-88 now stand in condition for allowance.

Thomason is non-analogous art:

The problem solved by Thomason is not within the field of endeavor of either Applicant or Carmody, and is not reasonably pertinent to solving problems of concern to Applicant as required to establish as *prima facie* case of obviousness. *In re Wood*, 599 F.2d 1032, 202 USPQ 171 (CCPA 1979). One of skill in the art would not reasonably be expected to look Thomason for a low-cost solution to prevent fraud related to managing thousands or millions of wastewater sites for each homeowner because use of Thomason would result in *an astronomically expensive*

*maintenance system.* A solution is needed that, for practical purposes, is less than a few dollars a month to operate for each location whereas Thomason appears to require the cost of a small movie production at each location. For purposes of solving the problem, Thomason is prohibitively expensive both to manufacture and to operate at millions of wastewater sites, does not supply a solution anyway, and does not relate to oversight of service companies themselves who have for years collected money but did not actually perform routine inspections.

Summary:

Carmody is essentially a paperwork handling system which assumes that all paperwork prepared by a service company is accurate. History shows this assumption to be quite out of touch with reality. Carmody clearly does not provide independent verification of the information in the paperwork. Thomason is not intended to be associated with automatically filing forms and is not at all concerned with oversight of the service company itself. Thomason is non-analogous art being directed to a system unsuited to solve the problems addressed by Applicant. Clearly, there was no motivation at the time of the invention to combine Carmody with Thomason.

Moreover, the state of the art at the time of the invention indicates a long standing problem which had never been solved prior to Applicant - strong facts which support Applicants contention that it would was not obvious to one of skill in the art at the time of the invention to randomly combine Carmody and Thomason, neither of which even appear to recognize the problem.

Furthermore, it is respectfully submitted that Carmody and Thomason are deficient do not show, even in combination, the claim limitations of claims 1-88.

For any of the above-listed reasons, it is respectfully submitted that the rejection to claims

1-87 is respectfully traversed and that claims 1-88 are now allowable. Accordingly, Applicant respectfully proposes that the application now stands in condition for allowance and earnestly requests that a Notice of Allowance to be issued forthwith.

Respectfully submitted,



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**CERTIFICATE OF MAILING**

I, Sheri Cooper, hereby certify that this correspondence and all referenced enclosures are being deposited by me with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on October 12, 2004.

By: 